



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Collective Bargaining and the Law as a Basis for Industrial Reorganization

By JULIUS HENRY COHEN

Cohen, Gutman and Richter, New York City

THE title "collective bargaining" is given to many things of essentially different character. As a term it is apt to be misleading. Primarily, it is the dealing between an organized group of employees and one or more employers, and refers to the process of *bargaining* on the part of *groups* of employees, as distinguished from the process of individual contracting. The term, however, has come to include the making of industrial agreements between large groups of employers, large groups of employees and representatives of the public. Such industrial agreements during the war became quite common through the efforts of the War Labor Board and the labor departments of various branches of the government.

COLLECTIVE BARGAINING IN GARMENT INDUSTRIES

The protocols or agreements in the garment industries, extending over wide areas and embracing many thousands of people, are examples of collective bargaining of a new type. They determine the standards of wages, hours and other working conditions, as the old collective bargains did, but they do more. They establish agencies like the Joint Board of Sanitary Control in New York, a permanent board of arbitration, a permanent conference board, and administrative agencies for the redress of grievances and the adjustment of disputes before they ripen into conflict. Such agreements as these are, in reality, new phases of industrial

organization. In fact they mean the government of industry by those supplying the capital and those supplying the labor, through organization on both sides continuously functioning through agencies of their own selection.

SELF-GOVERNMENT IN INDUSTRY

This kind of government is a new kind of government. It is the effort of democracy to assert its power of self-government in industry. This philosophy is developed in an article in the *Columbia Law Review* for April, 1920, by Robert L. Hale, entitled "Law-making by Unofficial Minorities." The war has brought us to the realization that the productivity of a people depends upon the interest of the workers in their work. During the war we appealed to them on patriotic grounds and the response indicated that the incentive to effort is not to be found in the old "pleasure and pain" economic philosophy. But along with the incentive to production is the necessity for systematic organization and orderly administration in industry. Even if every living person producing commodities were moved to his greatest exertion by interest and ambition, there would still remain the problem of leadership and organization. Enthusiasm alone will not run industry. No matter, then, how much we increase the *morale* of production by appealing to the worker's interest in his work, we must face the problem still with us, and likely to be with us for some time to come, of how to maintain discipline in industry. If

the old individual relationship between employer and employee is no longer possible and "command" and "obey" are no longer in the vocabulary of factory management, how are we to secure the essential discipline necessary to run industry? The power to discharge is no power at all to maintain discipline if there is a shortage of labor supply. It is a blank cartridge.

POLITICAL GOVERNMENT AND INDUSTRY

If we turn to the lessons of political government, we learn that there is a very marked limitation upon the effectiveness of government through the use of force. The small minority that constitutes the ruling administrators cannot forever compel obedience to its will. Inevitably the result is revolution. We have succeeded in political democracy by recognizing the principle of self-government, by winning through the participation in the process of its making, acquiescence in the law by those who helped to make it. If it were not that the people themselves know that they can make or unmake the law, political democracy would fail. This factor of human independence, asserting itself with the French Revolution, is now more formidable than ever before in the history of the world. Great masses of men have been educated to a realization that industry depends for its continuance upon the united exertion of millions of people, each of whom is vitally important in his own place. The time has passed when great masses of men can be brought to obey law simply because it is law.

SELF-GOVERNMENT IN INDUSTRY

Applying these lessons of political experience to industry, we find government in industry as indispensable as

municipal government. Peace, orderliness, organization, willingness to postpone differences in order that the machinery may go on—all these are present. In addition, there is the vital fact that industry cannot go on without the active coöperation of the worker. It is possible in government to run the government in spite of the indifference of the citizen. But we cannot run industry with indifferent workmen. We must search, then, for a method in industry which will provide for self-government and we must make this self-government effective. My experience and my study lead me to the conclusion that "constitutional government in industry can best be brought about" through agreements between organized employers and organized employees, freely arrived at through representatives of their own choosing, but when arrived at, supported by the law of the land. In brief, just as commerce has been built up upon the legality of individual contract, I think industry is likely to be built up upon the basis of the legality of collective agreements. I would give to collective agreements the same enforceability that is given to individual agreements. I would make the parties to their making responsible for any breaches. By putting collective agreements on such a plane of legality, the faithfulness of the parties to such agreements would be put to the test, and, as in the mercantile world, a *credit responsibility* would be established. The employers' association or the labor union that observed its contracts would thereby secure a credit reputation, extending its field for doing further business. I am convinced that if such a method of legalizing collective bargaining were adopted, we should rapidly do away with "outlaw" and insurgent unions. Just as in the recent railroad strike, the labor organization desiring to pre-

serve its credit as a contract observing body would join hands with the employers in repressing those who would break their contracts or who would stop the wheels of industry in order to secure the accomplishment of their will. In the printers' strike of 1919, in the longshoremen's strike at New York of the same year, we saw the same manifestation of a new kind of "law and order"—the effort of the legitimate organization of labor, in coöperation with employers, to keep in discipline a recalcitrant and anarchic minority. I regard these manifestations as the first indication of a new kind of democratic government, of a new kind of self-government in industry. I believe that such movements should be analyzed and considered, and if upon analysis they are found to be sound, they should be encouraged. If, through the organization of the workers themselves and through their own leadership, by the process of contract making with employers, there can be established rules and regulations for the government of industry, we shall find the way to the discipline essential to the carrying on of industry.

INDUSTRIAL LEGISLATION AND INDUSTRIAL GOVERNMENT

I do not believe that the way out is to be found in industrial courts created by the state or the nation. I do not believe that such courts will win the confidence of the workers. I believe that it is possible to win their confidence and their support for tribunals which they help to create, and upon which they have representation. These tribunals, when created, should have the power granted to them by the workers and the employers alike to make effective the regulations they establish. This is the history of the Joint Board of Sanitary Control, which is about to celebrate its tenth anniversary. By precisely this process of self-imposed industrial legislation, it has completely revolutionized the physical habits in factory life in what was known as one of the "sweated" industries. It is because of this epoch-making experience that I believe collective bargaining should be recognized legally, and as a matter of public policy encouraged as a process of industrial legislation and government in industry. I believe in that kind of *collective bargaining*.